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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 867 (RMB)

5 REZA ZARRAB

6 Defendant.

7 -----x
8 New York, N.Y.
May 25, 2017
9:48 a.m.

Before:

10 HON. RICHARD M. BERMAN,

District Judge

11 APPEARANCES

12 JOON H. KIM

13 Acting United States Attorney for the
Southern District of New York

14 BY: SIDHARDHA KAMARAJU
SEYHAN SIRTALAN

15 Assistant United States Attorneys

16 BRAFMAN & ASSOCIATES P.C.

Attorneys for Defendant Zarrab

17 BY: BENJAMIN BRAFMAN
-and-

18 DOAR RIECK DeVITA KALEY & MACK

19 BY: JAMES R. DeVITA

-and-
FERRARI & ASSOCIATES, P.C.

20 BY: ERICH C. FERRARI

21 - also present -

22 SA Jennifer McReynolds, FBI

23 Seyhan Sirtalan,
Asiye Kay,

24 Turkish language interpreters

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1 THE COURT: How are you all? Please be seated.

2 So let me suggest a game plan for today. First I'm
3 going to go over where I think we are, and then I'm going to
4 ask for some oral clarification from defense and from the
5 government. Then I am going to -- I plan to ask, unless there
6 is objection, some supplemental questions that the government
7 had suggested that we include in the Curcio and then return to
8 where we were in the Curcio joint questions.

9 I don't think I am going to rule today. I don't know
10 that it will take me too long to do that, but I just want to go
11 over everything since it is a pretty voluminous record.

12 So, here's where I think we are. We began the Curcio
13 hearing with respect to Messrs. Giuliani and Mukasey on May 2.
14 We continued that -- oh, let me ask if the interpreter is
15 working and if Mr. Zarrah is able to understand the
16 proceedings?

17 MR. DeVITA: Apparently the broadcasting is
18 intermittent, your Honor.

19 THE INTERPRETER: Your Honor, the sound is getting
20 some traffic so we will test the other one.

21 THE COURT: Is it the headset or what?

22 THE INTERPRETER: I believe it is the headset.

23 THE COURT: Is there another headset?

24 MR. DeVITA: We have another headset, your Honor. We
25 will try that one.

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(Pause)

We have a third option, your Honor.

Three is the charm.

THE COURT: Three is the charm, OK.

So, Mr. Zarrab, you are able to understand the Turkish language interpreter with the use of the headset?

THE DEFENDANT: I understand.

THE COURT: OK. Great.

So let me start again. We began the Curcio hearing respecting Messrs. Giuliani and Mukasey on May 2. The hearing was continued to May 11, but on May 11 we did not continue with further questions because I had an interest in some additional submissions from counsel that would include, among other things, answers to these questions: Whether Greenberg Traurig's representation of both Mr. Zarrab and the Republic of Turkey is an actual conflict?

2. Who is Greenberg Traurig's client when Mr. Giuliani meets with Turkish or United States officials to discuss Mr. Zarrab's case? Is it Turkey or Mr. Zarrab? And whether such discussions are legally privileged? Attorney-client was the reference, and there was some discussion of work product as well -- attorney work product.

May Messrs. Giuliani or Mukasey participate in or take positions adverse to Mr. Zarrab in negotiations between the United States and Turkey?

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1 And I'll ask counsel, if you wish, in a minute to
2 summarize what answers were submitted to those questions.

3 And then in a written order dated May 15, I asked
4 counsel to comment on, first of all, a May 2 colloquy which is
5 found at page 13, lines 18 -- well, I'm not sure what lines
6 they are, but it's found in the May 2, 2017 transcript, and it
7 is as follows.

8 The Court asks: "Then the last question from
9 yesterday's," May 1, 2017, "order, do office holders and/or
10 members or affiliates of the governments of the United States
11 or Turkey do business with Mr. Zarrab and/or any of
12 Mr. Zarrab's affiliates? If the answer is yes, could you
13 explain?

14 "Mr. Brafman: I think the answer might be yes and yet
15 might be privileged, given the dynamics of this case in its
16 present posture and some of the charges.

17 "The Court: I see.

18 "Mr. Brafman: But they certainly do not impact on
19 what Mr. Giuliani's firm does or does not do on behalf of
20 Turkey.

21 "The Court: OK. So let me take those answers under
22 advisement and proceed with the Curcio hearing."

23 So I'm going to give Mr. Brafman an opportunity to
24 explore that or explain that, if he wishes, somewhat further.

25 And I also asked counsel to supplement the submissions

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1 made as to whether Messrs. Giuliani and Mukasey and/or their
2 firms, or any defense counsel in the case, have also been
3 retained by Iran Halkbank or Turkey. Since that May 11
4 conference, I received additional affidavits from Mr. Giuliani
5 and Mr. Mukasey, dated May 22, 2017 and May 19, 2017,
6 respectively. I also received additional, as I mentioned,
7 proposed Curcio questions from the government in a letter dated
8 May 22, 2017.

9 In that letter the government states that, based on
10 the information available to it at the current time, Greenberg
11 Traurig's concurrent representation of Mr. Zarrah and the
12 Republic of Turkey presents at the very least a potential
13 conflict. The government goes on to state, quote, The Court
14 and the government are obligated to ensure only that the
15 defendant is aware of the potential or actual conflict as well
16 as aware of his right to conflict-free counsel and,
17 nevertheless, waives that right to conflict-free counsel.
18 Accordingly -- this is still the government quote -- the Court
19 need only evaluate whether the defendant understands the
20 potential conflict and knowingly and intentionally waives that
21 conflict.

22 Let me ask our independent counsel for this Curcio
23 purpose, Mr. DeVita, if the defense has had sufficient time to
24 review the government's submission and its proposed additional
25 Curcio questions, which I was thinking of adding?

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1 MR. DeVITA: Yes, your Honor, I have. I met with -- I
2 have now met with Mr. Zarrab four times, together with a
3 Turkish interpreter, most recently Tuesday night, and we had
4 the occasion to go over the government's most recent
5 submission. He's aware of those questions and is prepared to
6 respond.

7 THE COURT: Anybody have any objection to my asking
8 those additional questions?

9 MR. BRAFMAN: No, your Honor. I think, without
10 conceding everything the government has said in its most recent
11 submission dated May 22, 2017, I don't have any objection to
12 your Honor asking those additional questions. I would also
13 add, respectfully, that there are other issues that I would
14 like to address at some point this morning. But I would also
15 add that I agree with --

16 THE COURT: We could explore it after we go through
17 this.

18 MR. BRAFMAN: You can do it any way that your Honor
19 wishes.

20 THE COURT: I mean, do they relate to the questions
21 and the Curcio?

22 MR. BRAFMAN: They don't relate to the specific
23 questions.

24 But I do also agree with the government's ultimate
25 conclusion in their letter that whether this is an actual or

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1 potential conflict, Mr. Zarrab, being fully informed and having
2 an opportunity to confer with independent counsel and being an
3 intelligent man, can knowingly and intelligently waive any
4 conflicts about these issues removed from the case.

5 THE COURT: I don't necessarily disagree. I think the
6 emphasis, in my understanding of the Curcio, is more on
7 potential conflicts --

8 MR. BRAFMAN: Right.

9 THE COURT: -- are certainly waivable, and I guess
10 we'd have a little more hiccup, so to speak, if they were
11 actual.

12 MR. BRAFMAN: I don't believe there are any actual
13 conflicts.

14 THE COURT: I don't know that anybody is asserting
15 that there is an actual conflict.

16 MR. BRAFMAN: Thank you, sir.

17 THE COURT: So, all right. It is my understanding
18 that, Mr. Brafman, that you wanted to at some point supplement
19 that Q and A from the May 2 transcript.

20 MR. BRAFMAN: Yes. I did write your Honor a letter on
21 May 8th in which I quoted specifically from the transcript on
22 May 2nd where, in response to the Court's question concerning
23 business relationships with Turkey, my answer, in pertinent
24 part, was, at pages 13 and 14, "I think the answer might be yes
25 and yet might be privileged." I then asserted in my letter

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1 that I was not authorized to say it might even be yes, and that
2 the answer to that question, given the dynamics of this case
3 and the allegations that the government has made, would be a
4 violation of his Fifth Amendment privilege against
5 self-incrimination to ask him to even respond to that question.
6 And my "might be" answer should be stricken because after I
7 spoke to Mr. Zarrab I realized I wasn't authorized to even say
8 that.

9 THE COURT: OK. So you want to essentially correct
10 the record, as it were. And so just give me just a short,
11 clear statement of --

12 MR. BRAFMAN: The answer I gave to the Court on
13 May 2nd was, "I think the answer might be yes and yet might be
14 privileged, given the dynamics of this case in its present
15 posture and some of the charges." I'd like the record to
16 reflect that my answer should be: "I think the answer would be
17 privileged or would otherwise require Mr. Zarrab to violate his
18 right against self-incrimination. I, therefore, respectfully
19 decline to answer the question."

20 MR. DeVITA: Your Honor, just so the record is clear.
21 I discussed on a purely hypothetical basis with Mr. Zarrab if
22 there were relationships with the Turkish government, how that
23 might have an impact on his representation, without asking him
24 the question of whether there are or aren't. And I believe he
25 understands the ramifications of any theoretical such

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1 relationship.

2 THE COURT: Whether there are or aren't --

3 MR. DeVITA: I did not ask whether there are or aren't
4 because I didn't want to invade Mr. Brafman's relationship or
5 get into the Fifth Amendment area. What I did discuss with
6 him, as part of the overall discussion, is theoretical
7 possibilities. If there were theoretically some relationship
8 with the Turkish government, how that might have an effect --

9 THE COURT: Is that a theoretical economic
10 relationship?

11 MR. DeVITA: Yes. How that might have an impact on
12 the representation of Greenberg Traurig.

13 Judge, I feel he understands the concerns that it
14 could raise, if they exist, and I have no knowledge and am not
15 making any representation about whether they do or they don't.

16 THE COURT: OK. All right. Let me move forward.

17 The additional questions -- so let's swear in
18 Mr. Zarrab.

19 THE CLERK: Sir, if you could stand for a moment,
20 please, and raise your right hand.

21 (The Defendant, Reza Zarrab, was sworn through the
22 interpreter)

23 THE CLERK: Thank you, sir. You may be seated.

24 THE COURT: Oh, probably, before I go further, I also
25 ought to state a few more things for the record.

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1 According to the Giuliani affidavit of May 22,
2 Mr. Giuliani states, among other things, that "Neither I nor my
3 firm have represented Iran or Halkbank nor have we during
4 pendency of my representation of Mr. Zarrab." He goes on to
5 say, "Mr. Zarrab is our client and our only client in this
6 matter. Neither Mr. Levy," who is Mr. Giuliani's partner, "nor
7 I represent the interests of Turkey or the United States. Our
8 attorney-client obligations are exclusively to Mr. Zarrab."

9 He says further, "At all times that I have had any
10 substantive conversation with a representative of the United
11 States government or the government of Turkey, Mr. Mukasey has
12 fully participated, and that practice will continue as long as
13 we continue to represent Mr. Zarrab. As such, even if the
14 Court were to imply a conflict with regard to me" --
15 Mr. Giuliani, that is -- "and my firm's ethically screened-off
16 representation of Turkey, Mr. Mukasey's presence ensures that
17 Mr. Zarrab always has conflict-free counsel fully participating
18 and protecting his interests."

19 He goes on to say, "In representing Mr. Zarrab, any
20 conversations Mr. Mukasey or I have had or may have to further
21 his interests as a defendant before this Court are surely
22 within the work product privilege applicable to attorneys."

23 And further he says, "Interviewing witnesses,
24 gathering information, or otherwise discussing matters in
25 furtherance of our client's defense are matters uniquely within

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1 our role as criminal defense attorneys that must be protected
2 as work product at the very least."

3 And Mr. Mukasey states in his affidavit that, "There
4 has been no representation by me or Debevoise of Turkey, Iran,
5 or Halkbank."

6 So I just wanted the record to be clear what their
7 responses are.

8 So, Mr. Zarrab, we have these additional Curcio
9 questions that the government has asked me to ask you and which
10 defense counsel, your counsel, has no objection to me asking
11 the questions. So, here they are.

12 So, one is -- one supplemental question is: Do you
13 understand that if and when Mr. Giuliani negotiates with the
14 United States government officials about your case, he may also
15 be influenced by his firm's, Greenberg Traurig's representation
16 of the Republic of Turkey? Do you understand that?

17 THE DEFENDANT: Yes, I understand.

18 MR. BRAFMAN: Your Honor, if I may?

19 THE COURT: Yes.

20 MR. BRAFMAN: I didn't want to spend a lot of time
21 going back and forth on these questions because I knew he could
22 address some.

23 I think, given Mr. Giuliani's most recent affidavit,
24 he represents that he doesn't represent the Republic of Turkey.
25 So I think these questions are broad in order to ensure that

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1 the waiver is OK. And with respect to the second question as
2 well, it occurs to me that when you ask in particular, do you
3 understand that if that occurs, then the only lawyers
4 representing you during these negotiations may have
5 inconsistent obligations to the Republic of Turkey, it is now
6 clear to us from Mr. Giuliani's affidavit that Mr. Mukasey is
7 involved and he appears to be conflict-free counsel.

8 THE COURT: I get you, and I don't necessarily
9 disagree. I think it would be just as well to ask the
10 questions.

11 MR. BRAFMAN: That's fine.

12 THE COURT: And then if the conclusion has to be drawn
13 whether or not Mr. Mukasey is conflict free, then that solves
14 any problem.

15 MR. BRAFMAN: That is fine.

16 THE COURT: So let's have it in the record and then
17 we'll --

18 MR. BRAFMAN: OK.

19 THE COURT: OK. So the next question is: In
20 particular, Mr. Zarrab, do you understand that if that occurs,
21 that is to say, the negotiations we just talked about in the
22 immediately-preceding question, then the only lawyer
23 representing you during these negotiations may have
24 inconsistent obligations to you and the Republic of Turkey?

25 I think that question could be explained to mean that

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1 that means Mr. Giuliani in this case.

2 THE DEFENDANT: Yes, I understand.

3 THE COURT: OK. And do you further understand that
4 during those negotiations, that lawyer, Mr. Giuliani, may not
5 be able to negotiate in a manner that harms or is to the
6 detriment of the Republic of Turkey?

7 THE DEFENDANT: Yes, I understand.

8 THE COURT: Next question is: Indeed, do you
9 understand that Mr. Giuliani may be required or may decide to
10 place the interests of the government of Turkey before your
11 interests in this matter? Do you realize that?

12 THE DEFENDANT: Yes, I understand.

13 THE COURT: OK. And then on page 4 of the
14 government's letter, they pose two additional questions as
15 Curcio questions. And the first of these two is that, "Do you
16 understand that if you authorize Mr. Giuliani, or any of your
17 other attorneys, to disclose communications between you and
18 your attorneys to any third party, including U.S. or Turkish
19 government officials, that could lead to the waiver of your
20 attorney-client and attorney work product privileges?

21 THE DEFENDANT: Yes, I understand.

22 THE COURT: And I'm comfortable that both Mr. Brafman
23 and Mr. DeVita have discussed attorney-client privilege and
24 work product privilege with Mr. Zarrah.

25 MR. DeVITA: That is correct, your Honor.

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1 MR. BRAFMAN: That is correct, your Honor.

2 And, your Honor, just for the record, the fact that I
3 have consented to the questions proposed by the government does
4 not imply in any way that I share their legal conclusions in
5 the letter with respect to either attorney-client privilege or
6 work product. I just explained to him --

7 THE COURT: I understand that, and I understand that
8 as well that that's your position.

9 The next question is: And do you also understand that
10 if you do waive your attorney-client and attorney work product
11 privileges, then your communications with your lawyers could be
12 disclosed to third parties, including the government, which
13 could seek to use them against you?

14 THE DEFENDANT: Yes, I understand.

15 THE COURT: Then on page 5, there are two or three
16 additional questions proposed by the government, the first of
17 which is: Do you understand that Mr. Giuliani has a duty to
18 negotiate a resolution of this case that is in your best
19 interest?

20 THE DEFENDANT: Yes, I understand.

21 THE COURT: And do you understand that Mr. Giuliani's
22 firm, Greenberg Traurig, also has a duty to the Republic of --
23 his firm does -- to the Republic of Turkey during any
24 negotiation on your behalf to refrain from acting in a way that
25 may harm Turkey's interests or image?

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1 THE DEFENDANT: Yes, I understand.

2 THE COURT: And I take it that question from the
3 government relates to the agency relationship between Greenberg
4 Traurig and Turkey?

5 MR. KAMARAJU: That is correct, your Honor.

6 THE COURT: And then, finally, in these additional
7 questions: Do you understand that, as a result, Mr. Giuliani
8 may not be able to negotiate a resolution of your case in a
9 manner that would be contrary to Turkey's interests?

10 THE DEFENDANT: Yes, I understand.

11 THE COURT: So, then, Mr. Brafman, I think we left off
12 in the original joint Curcio question submission at page 6 and
13 we --

14 MR. BRAFMAN: I think it was at the bottom of page 5,
15 sir.

16 MR. KAMARAJU: Yes, your Honor.

17 THE COURT: For reasons which are hard to explain, my
18 page 6 is your page 5.

19 MR. KAMARAJU: It was question 8.

20 MR. BRAFMAN: Let's get the number of the question so
21 that we are all on the same page.

22 MR. KAMARAJU: It was question 8.

23 MR. BRAFMAN: I think it is question 8, your Honor.

24 THE COURT: Yes. Before I get to that, I am just
25 looking in the transcript to see precisely where we ended up.

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1 And I think it may have been you, Mr. Brafman, who suggested --
2 I was suggesting that we stop pretty soon before we get to the
3 category called "The right to Conflict-Free Representation,"
4 and you suggested, and I thought it was a good one, that we
5 stop actually before asking question number 8, under the topic
6 "Potential Conflict of Interest Posed by Greenberg Traurig's
7 Representation of the Republic of Turkey." Is that right?

8 MR. BRAFMAN: Yes, sir.

9 THE COURT: So let's turn, then, to Mr. Zarrah and ask
10 him to please tell me in your own words what your understanding
11 is of the potential conflicts of interest that arise in this
12 situation. And by "this situation" we're talking particularly
13 about the Greenberg Traurig matter and that that firm is also
14 an agent of the Republic of Turkey, that is, Mr. Giuliani's
15 firm.

16 MR. DeVITA: Your Honor, just so the record is
17 clear -- I think I explained this earlier -- that the
18 interpreter and I both spoke to Mr. Zarrah. He has written out
19 in his own handwriting the answer to that question after
20 discussing it with me and through the interpreter. So he is
21 going to read his answer, which is actually Turkish at this
22 time.

23 THE COURT: Sure.

24 MR. DeVITA: So the interpreter will --

25 THE COURT: Interpret it into English for us.

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1 MR. DeVITA: Yes.

2 THE COURT: Yes. Sure.

3 THE DEFENDANT: Your Honor, I understand that the
4 Greenberg firm represents the government of the Turkish
5 Republic. In theory, the interests of the government of the
6 Turkish Republic and my interests could be different in
7 connection with this case.

8 Your Honor, I do understand the conflict of interest
9 statute explained to me. In theory, if those interests and
10 conflicts, some actions that are taken in the court that might
11 help me might harm the government of Turkish Republic and some,
12 in theory, some actions that help the government of the Turkish
13 Republic might harm me.

14 And, in addition, I do waive all my rights according
15 to this subject.

16 THE COURT: If there were such conflicting situations,
17 right?

18 THE DEFENDANT: If there were a potential conflict of
19 interest. Yes.

20 THE COURT: OK. And then the next question to you is,
21 do you understand that the greatest danger may be in the
22 inability to foresee all of the potential conflicts that might
23 arise because of Greenberg Traurig's simultaneous
24 representation of the government of Turkey on the one hand and
25 the firm's representation of you on the other hand?

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1 THE DEFENDANT: I understand, your Honor.

2 THE COURT: OK. And then the final section relates
3 to -- it is called D -- Section D in these submissions. It is
4 entitled, "The Right to Conflict-Free Representation."

5 And the first question in that category is: Do you
6 understand that in every criminal case, including this one, the
7 defendant or defendants is entitled to assistance of counsel
8 whose loyalty to him is undivided, who is not subject to any
9 factor that might in any way intrude upon an attorney's loyalty
10 to his defendant's interests? Do you understand that?

11 THE DEFENDANT: I understand.

12 THE COURT: Another way of saying that is do you
13 understand that you are entitled to attorneys who have only
14 your interests in mind and not the interests of any other
15 client?

16 THE DEFENDANT: I understand.

17 THE COURT: And next question is: Have you received
18 any inducements or promises or threats with regard to your
19 choice of counsel in this case?

20 THE DEFENDANT: No.

21 THE COURT: Next question is: Do you understand that
22 you have a right to consult with an attorney free from any
23 conflict of interest about the issues and that the Court has
24 given you an opportunity to do just that, to discuss all
25 aspects of the information that I have conveyed to you today,

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1 in particular, with Mr. DeVita?

2 THE DEFENDANT: Yes, I understand that. I had a
3 chance to talk four times with Attorney DeVita and also many
4 times with Attorney Brafman and also with Mr. Ferrari.

5 THE COURT: So that is my next question. Have you
6 consulted with any attorneys other than Mr. Giuliani or
7 Mr. Brafman about the dangers to you of these potential
8 conflicts of interest -- I'm sorry. Have you consulted with
9 any attorneys other than Mr. Giuliani or Mr. Mukasey about the
10 dangers to you of these potential conflicts of interest and,
11 for example, Mr. Brafman or Mr. DeVita and/or Mr. Ferrari?

12 THE DEFENDANT: Yes. As I told you before, I had the
13 chance to talk to them, to talk to all three of them before.

14 THE COURT: OK. So here this is another question that
15 is going to be somewhat repetitive but it is worth doing.

16 Have you consulted with independent counsel,
17 Mr. DeVita, about the conflicts or potential conflicts of
18 interest that I have described to you today?

19 THE DEFENDANT: Yes, your Honor. I had the chance to
20 talk to the court-appointed attorney about this subject.

21 THE COURT: And has he fully advised you about these
22 matters?

23 THE DEFENDANT: Yes. I believe that he has explained
24 everything from all different aspects.

25 THE COURT: And do you wish or do you need to have any

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1 additional time to consult with independent counsel about these
2 matters?

3 THE DEFENDANT: I believe that there is no further
4 information they can give us. I believe that is sufficient.

5 THE COURT: And after considering all that we've
6 discussed today and that we discussed on May 2nd about the ways
7 in which Greenberg Traurig's representation of, first of all,
8 the banks alleged to be victims in your case may adversely
9 affect your defense, do you believe that it is in your best
10 interest to continue with Greenberg Traurig as one of the law
11 firms representing you?

12 THE DEFENDANT: Definitely, yes.

13 THE COURT: Is that your wish to do that?

14 THE DEFENDANT: (In English) Yes.

15 THE COURT: And after considering all that I have
16 discussed with you today and that we discussed on May 2nd about
17 the ways in which Greenberg Traurig's representation of the
18 government of Turkey may adversely affect your defense, do you
19 believe that it is in your best interest to continue with
20 Greenberg Traurig as one of the law firms representing you?

21 THE DEFENDANT: Definitely, yes.

22 THE COURT: And is that your wish?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And turning now to Debevoise.

25 After considering all that I have said to you today

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1 and that we discussed on May 2nd about the ways in which
2 Debevoise & Plimpton's representation of the banks alleged to
3 be victims in your case may adversely affect your defense, do
4 you believe that it is in your best interest to continue with
5 Debevoise & Plimpton as one of the law firms representing you?

6 THE DEFENDANT: Definitely, yes.

7 THE COURT: And is that your wish?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And do you understand that by choosing to
10 continue with both Greenberg Traurig and Debevoise & Plimpton
11 as two of the law firms representing you, you are waiving your
12 right to be represented solely by attorneys who have no
13 conflict of interest?

14 THE DEFENDANT: (In English) Yes, I understand.

15 THE COURT: And are you also knowingly and voluntarily
16 waiving your right to conflict-free representation from those
17 firms?

18 THE DEFENDANT: (In English) Yes.

19 THE COURT: Do you also waive any potential
20 post-conviction argument, assuming that you were convicted in
21 this case, on appeal or otherwise, that by virtue of Greenberg
22 Traurig's representation of banks alleged to be victims in this
23 case you were denied effective assistance of counsel?

24 THE DEFENDANT: (In English) Yes.

25 THE COURT: And do you waive any post-conviction

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1 argument, on appeal or otherwise, that by virtue of Greenberg
2 Traurig's representation of the government of Turkey you were
3 denied effective assistance of counsel?

4 THE DEFENDANT: (In English) Yes.

5 THE COURT: And do you waive any post-conviction
6 argument, on appeal or otherwise, that by virtue of Debevoise &
7 Plimpton's representation of banks alleged to be victims in
8 this case, you were denied effective assistance of counsel?

9 THE DEFENDANT: (In English) Yes.

10 THE COURT: Is there any matter from today or
11 May 2nd or otherwise that I have discussed with you that you
12 wish to have explained further?

13 THE DEFENDANT: No, your Honor. Thank you so much for
14 the opportunity for me to get more informed with additional
15 consulting from the attorneys that you assigned.

16 THE COURT: You are very welcome.

17 So is the government satisfied with the questions that
18 have been presented in this Curcio proceeding?

19 MR. KAMARAJU: Yes, your Honor.

20 THE COURT: And how about the defense?

21 MR. BRAFMAN: Yes, your Honor. On balance, given the
22 collective questions asked by the Court at the various
23 proceedings, I think this has been perhaps the most thorough
24 Curcio proceeding I've ever been involved in. And I think the
25 defendant has acknowledged, after consultation with independent

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1 counsel on several occasions, that he understands the nature of
2 the inquiry and has intelligently waived any right on the
3 post-conviction appeal that would relate to this issue.

4 THE COURT: Just for the record, my recollection is
5 that you said also something similar after the Kirkland & Ellis
6 Curcio hearing.

7 MR. BRAFMAN: Well, you know --

8 THE COURT: I mean that seriously.

9 MR. BRAFMAN: No. I stand by my statement.
10 Collectively, I began, that between the Kirkland & Ellis
11 proceeding and this proceeding, I'm not sure any defendant has
12 ever answered questions more thoroughly about potential
13 conflicts. I think, as a practical matter, for legal and
14 factual reasons, that issue is hopefully removed from the case.
15 I'm not, you know, prejudging how your Honor will rule.

16 THE COURT: Right.

17 MR. BRAFMAN: But I also want to point out that, your
18 Honor, in response to the government's May 22nd letter, they
19 raised issues that I don't believe relate strictly to Curcio
20 and, therefore, I did not choose to respond. I think it would
21 be premature for me to respond. And I think I might also not
22 be the appropriate party to respond, and hopefully you will
23 never have to reach that point. So I don't want to burden the
24 Court or myself, quite frankly, with writing briefs on these
25 issues.

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1 Your Honor, finally, unless the Court has other
2 questions, I'm aware from speaking with Mr. Vic Rocco, who
3 represents Ms. Atila, that the Court has set October 25th as
4 the trial date --

5 THE COURT: October 30th.

6 MR. BRAFMAN: I'm sorry. October 30th as the trial
7 date. I'm also aware, from speaking to Mr. Rocco and from
8 reviewing his statements to the Court, that on or before
9 June 12th, which is the next appearance for him and his client,
10 he will advise the Court as to whether it is possible or
11 impossible for him to be ready by the 30th, and he has
12 informally suggested to me that he may be requesting additional
13 time and asked me what my position would be.

14 Your Honor, I have a 14-month head start or a year
15 head start on his representation. I am aware of the volume of
16 material. So to the extent that on the 12th we will not be
17 present, if the subject arises -- I have discussed this with
18 Mr. Reza -- he thinks it's in his best interest to agree to an
19 adjournment if in fact that's what Mr. Atila requires. And if
20 your Honor requires me to submit something in writing after the
21 June 12th hearing, I will do that.

22 THE COURT: You don't need to. I am eager to meet
23 that date, if at all possible. So I do look forward to
24 discussing that with Mr. Rocco.

25 MR. BRAFMAN: I'm holding that date until relieved by

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1 your Honor.

2 THE COURT: Great. So that's great.

3 So are there any matters that you want to -- how about
4 the government? Did you want to raise anything further today?

5 MR. KAMARAJU: I think just a housekeeping matter. At
6 the last conference with respect to Mr. Atilla, the Court
7 excluded time until the date of the new trial date,
8 October 30th. So just for purposes of the record, we'd ask
9 that you also exclude time until October 30th with respect to
10 this defendant.

11 MR. BRAFMAN: There is no objection, your Honor.

12 THE COURT: OK. So let me do that.

13 And let me find, under 18 United States Code, Section
14 3161, that the request for adjournment by both sides is
15 appropriate and warrants exclusion of the adjourned time from
16 speedy trial calculations to and including October 30, 2017. I
17 further find that the exclusion is designed to prevent any
18 possible miscarriage of justice, to facilitate these
19 proceedings, including pretrial preparation, and to guarantee
20 effective representation of and preparation by counsel for all
21 parties -- both parties. Thus, the need for exclusion and the
22 ends of justice outweigh the interests of the public and the
23 defendant in a speedy trial pursuant to 18 U.S.C., Section
24 3161(h)(7)(A) and (B).

25 I don't think there is any short-term conference

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1 scheduled. I don't see the need for one unless -- but you
2 should know that I'm always available if anybody wants one.
3 And if I feel we need to have a conference, I'll give you
4 advance notice.

5 MR. BRAFMAN: Thank you.

6 Can the record reflect and can the government make
7 certain not to produce Mr. Zarrab on the 12th because we are
8 not needed and we waive our appearance for that proceeding?
9 Producing him in his present condition is a great hardship
10 because they bring him in very early and sometimes he has to be
11 here all day.

12 THE COURT: I see no need for him to be here on the
13 12th.

14 MR. KAMARAJU: We won't produce him, your Honor.

15 MR. BRAFMAN: Thank you, sir.

16 THE COURT: OK. I think that's it for today, then.
17 Good to see you all.

18 MR. BRAFMAN: Thank you, your Honor.

19 MR. KAMARAJU: Thank you very much.

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